### BEFORE THE EMPLOYMENT APPEAL BOARD Lucas State Office Building Fourth floor Des Moines, Iowa 50319

MARY KAY EVERHART	: HEARING NUMBER: 08B-UI-05170
Claimant,	
and	EMPLOYMENT APPEAL BOARD
POWERS MANUFACTURING CO	

Employer.

# NOTICE

THIS DECISION BECOMES FINAL unless (1) a request for a REHEARING is filed with the Employment Appeal Board within 20 days of the date of the Board's decision or, (2) a PETITION TO DISTRICT COURT IS FILED WITHIN 30 days of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

## DECISION

### UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is AFFIRMED.

Elizabeth L. Seiser

Monique F. Kuester

### DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The employer testified that the claimant became frustrated in the disciplinary hearing and left the premises, which the employer testified was corroborated in the Fact-finding Interview. The claimant denied that she quit, arguing that the employer directed her to leave since she was having such a hard time.

The employer failed to provide any firsthand witness to refute the claimant's testimony. In addition, the Fact-finding Interview notes were not made a part of the record. Thus, I would attribute more weight to the claimant's version of events. Any reasonable person would assume that he or she was being terminated. Given this record, I would conclude that the claimant was discharged and the employer failed to satisfy their burden of proving misconduct. Benefits should be allowed provided the claimant is otherwise eligible.

John A. Peno

AMG/ss

The employer submitted a written argument to the Employment Appeal Board. The Employment Appeal Board reviewed the argument. A portion of the argument consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the argument and additional evidence (documents) were considered, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/ss